

Comment on Origin Of Livestock

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I am here today representing 8 Accredited Certifying Agents from the Northeastern States, including my own organization (PCO), as well as Vermont Organic Farmers, Maine Organic Farmers and Gardeners Association, Rhode Island Dept of Ag, Northeast Organic Farming Associations of New York, Massachusetts and New Jersey, and Stellar Certification Services of the Demeter Association. These certification agencies have an average of 20 years experience in certifying organic farms.

Together, we certify 20,000 milking cows and another 20,000 young animals on about 300 dairy operations. Those cows are producing 50 million dollars worth of organic milk and milk products annually. In addition to fluid milk production, the dairy farmers in the Northeast are an integral part of the organic processed foods industry. In PA alone, 10 million dollars worth of organic dairy products were produced by family farms last year, including yogurt, cheese and fluid milk. Statistics for New York, Maine and Vermont are similar. Incidentally, those numbers do not include New Hampshire, where Stoneyfield Farms organic yogurt is produced. If we included them, the total annual revenue would be significantly higher.

The organic agricultural businesses necessary to support the organic milk producers are also extensive and include, most importantly, organic crop farmers, organic grain mills, seed, fertilizer and equipment dealers, veterinarians, inspectors and even certification agents. I especially wanted to mention the organic crop farms and mills in the Northeast. This is a huge industry, that simply would not exist if it weren't for the strength and depth of our organic dairy community. Organic crop production and processing nearly equals the dollar value of the organic dairy industry, at over \$40 million annually, mostly in the 2 largest states of PA and NY.

This 90-million-dollar industry owes its existence and continued stability to each and every family farm I was sent here to represent. Those 300 farmers AND the owners of the businesses they sell their milk and crops to, sent me here to tell you a few things.

They sent me here to tell the NOSB and USDA that the organic rule is for the most part a good rule. They believe the rule reflects the only real USDA program that truly supports the family farm – not by LDPs or other subsidies, but by giving honest, hardworking farmers an honest viable way to profit from the incredibly hard work they do.

These farmers said to me, here is a chance for the USDA through its National Organic Program to really stand behind their promise to help preserve the family farms in our great country.

But now it seems the program has gone out of its way to help large corporate dairy operations by allowing the purchase of non-organic dairy animals on a continuous and ongoing basis, while requiring the typical family operated dairy farm raising its own young animals to do so organically, in contradiction to the letter and intent of the rule.

And, the farmers told me, this 2 standards interpretation is obviously going to allow large conventional dairy operations to enter organic production – to get their slice of the organic pie, as they otherwise would not consider organic production to be cost-effective.

Now don't get us wrong, we are not opposed to expansion of the organic dairy industry. But, the farmers said, please point out to the USDA that the healthy growth our industry has experienced over the last 8 years will not continue under these discriminatory circumstances. The big will get bigger and the rest of us will get jobs at Wal-Mart.

What is the solution, I asked? They said: All you have to do is interpret the ~~admittedly~~ confusing and contradictory Origin of Livestock section by following the letter and intent of the rule. All we're asking you to do is be fair. If last third of gestation is required, than it's required of everyone producing organic milk. If

young stock only has to be managed organically for 1 year prior to milking, then everyone should get that allowance. We much prefer the former, requiring only organic animals, as it reflects the high standards we currently follow (and have always been held to here in the NE) AND it meets our consumers expectations, but we're more concerned about having a standard that is fair and consistent for all.

We in the Northeast, would support a simple rule change requiring that once organic milk production has begun, all animals must be managed organically from the last third of gestation.

The idea that a farm can produce USDA certified organic milk without ever having converted an entire distinct herd is creating a loophole that doesn't exist and directly contradicts the intent of the rule. Whether you believe that subparagraph 205.236(a)(2)(iii) is in the wrong place or not, the writers of this regulation would not have intended that farmers who fed 20% conventional feed for 9 months, a savings of about 25 cents per cow per day for the average farmer, should be relegated to a lower class, penalized economically, and put at a competitive disadvantage for the rest of their lives.

This conversion "exemption" as the policy calls it, was a practical solution to the problem of a shortage of organic grains in certain regions. 80 percent was considered to be the percentage of crops the typical farmer produces on the farm. 20 percent is the approx amount purchased.

Organic farmers truly believe in what they do. They work extremely hard to follow the rule and manage their farms for the health of their families, livestock and consumers of their products.

Here is a letter from a PA consumer of organic milk:

If replacement animals do not have to be "organic" in a certified dairy operation, then it defeats the whole purpose of certifying it "organic". Clearly the people who make these laws understand that and the ones who pass them also would seem to understand— organic is a lifestyle and a choice. And it needs to be made available to those of us who want to eat and maintain our households with "organic" products. How could an operation continue to be considered organic if the very animal producing the product can be replaced with non organic animals....And how could a public "buy" something, without knowing that well, some part of the product is actually not organic....how ridiculous...

Please pass on my sentiments that we need to protect and strengthen the laws that allow people to produce organic products from organic animals....It does matter and the public is just gaining acceptance of the idea of paying more for a truly organic product. I wouldn't think of drinking milk that wasn't produced organically...

**Origin of Livestock—the Dairy Replacement Wording Dilemma
Submitted on behalf of the Northeast Organic Dairy Producers Alliance**

The Final Rule of the National Organic Program carries contradictory wording on the origin of dairy livestock. The question has become does 205.236(a)(2) which states that *"Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic"* mean that once organic, dairy farms can bring new animals up to yearling age onto the farm that are conventionally raised when the Rule also states that *"Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation"*?

How could this contradiction have come about? In looking back at the second draft of the Rule [Federal Register Docket Number: TMD-00-02-PR2] and in carefully reading the preamble of the Final Rule, one can gain clarity on the change that occurred and understand what the final Rule was intended to say, although some of the final formatting did not quite make for explicitness.

The second draft is quite different from the Final Rule on Origin of Livestock. The draft 205.236(a) states that "Livestock or edible livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from birth or hatching ..." and then goes on to except poultry up to the second day of life, dairy animals up to 1 year prior to production of milk, and livestock for the production of nonedible livestock products up one year of life.

In the preamble to the Final Rule, (pages 80569-80570), livestock rule changes based on comments are discussed. The preamble discusses the fact that many commenters felt "that the full year organic feed requirement created an insurmountable barrier for small and medium-size dairy operations wishing to convert to organic production", that it was "economically prohibitive", and that existing "new entry" and "whole herd" conversion provisions in existing certification standards have been instrumental in enabling established nonorganic dairies to make the transition to organic production"..., and "that many current dairies have capitalized on this whole herd conversion provision and that the consistent growth in demand for organic milk and milk products reflected consumer acceptance of the principle". The preamble also iterated the June 2000 NOSB "endorsement of the conversion principle for operations that jointly convert dairy herds and the land on which they are raised" and iterated NOSB's further recommendation "that required that dairy animals brought onto an organic dairy must be organically raised from the last third of gestation".

The preamble goes on to state that the "final rule contains a provision for whole herd conversion that closely resembles those found in the NOSB recommendation and the existing certification standards. The final rule requires that an entire distinct dairy must be under organic management for 1 year prior to the production of milk." Then the

relaxed requirement of 80% organic or home-raised feed for the first 9 months of that year is laid out in the preamble. Following that, the preamble states that "After the dairy operation has been certified, animals brought on to the operation must be organically raised from the last third of gestation." We did not incorporate the NOSB's recommendation to provide young stock with nonorganic feed up to 12 months prior to the production of certified milk. By creating an ongoing allowance for using nonorganic feed on a certified operation, this provision would have undermined the principle that a whole herd conversion is a distinct, one-time event."

Another major difference between the second draft of the rule and the Final Rule is that the livestock conversion period of one year for non-edible products written in the second draft was deleted from the Final Rule. The preamble states that "We have changed this provision in the final rule to require that nonedible products be produced from livestock that have been organically managed from the last third of gestation" based on the Rule writers recognition that "the creation of a separate origin of livestock requirement for animals intended for nonedible products could be confusing".

Thus, it is crystal clear that the intent of the Rule writers was to have one standard for origin of livestock, with the exception of chicks and the exception of a one time herd conversion for nonorganic dairy herds to become organic. Once a dairy operation is organic, then all replacement stock, whether farm raised or purchased, is to be organic from the last third of gestation. This is further evidenced by the preamble stating that "The conversion provision also rewards producers for raising their own replacement animals while still allowing for the introduction of animals off the farm that were organically raised from the last third of gestation. This should protect existing markets for organically raised heifers while not discriminating against closed herd operations. Finally, the conversion provision cannot be used routinely to bring nonorganically raised animals into an organic operation. It is a one-time opportunity for producers working with a certifying agent to implement a conversion strategy for an established discrete dairy herd in conjunction with the land resources that sustain it." In addition 205.236(a)(3) states that "*breeder stock may be brought from a nonorganic operation onto an organic operation at any time: Provided, That, if such livestock are gestating and the offspring are to be raised as organic livestock, the breeder stock must be brought onto the facility no later than the last third of gestation*". This clause does not stipulate that such breeder stock is only in regards to the raising of slaughter stock but rather it states the generic "organic livestock" which means that it applies to dairy as well as to slaughter or nonedible product production stock--further confirming that the intent is that all dairy replacement animals be organic from the last third of gestation other than the new herd conversion.

There is the possibility that an organic dairy herd will come into being, not through conversion from nonorganic herd to organic, but from starting a new herd from baby calves up to yearlings. If a new herd is established this way, they can be managed organically from the start but at the very least must be under organic management for one year prior to the production of milk, either fully fed 100% organic feed or they too could be fed the 80/20 ration for the first 9 months of the year of organic management. Thus,

the clause that dairy animals must be under organic management for at least a year as well as a spelling out of the 80/20 conversion provision.

The confusion in the dairy origin standard comes about because of the way the Final Rule was formatted. The Rule was written to allow the entry of new herds into the organic fold and that certainly seems to be what was on the mind of the writers when they wrote that "Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold labeled, or represented as organic..." and then go on to state the specifics for a one time herd transition. That means that a herd of animals could have come into being by either being on full organic management for at least a year or could have used the 80/20 feed provision for the first 9 months of that year and then 100% feeding for the final 3 months. There is absolutely no discussion in the preamble on allowing conventional dairy replacement animals to be brought onto dairy farms once they are organic, thus the preamble offers absolutely no basis to the interpretation that conventional animals can continually enter existing organic dairy farms.

The point of question in the Rule comes in the formatting of the statement that "Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation" (205.236(a)(2)(iii)). The way that this section is formatted, if one did not read, study, and follow what the preamble stated, one could argue that this section requiring all future dairy animals to be organic from the last third of gestation was only meant to apply to farms that went through the 80/20 conversion process. However, the preamble is unequivocal that once a dairy herd is organic--no matter how or when they got to that state--then all replacement animals--whether farm raised or purchased--are to be organic from the last third of gestation.

Why is it clear that this argument for continually bringing conventional animals onto already existing organic dairy farms has no validity?

1. Section (205.236(a)(2)(iii)) does not state that it only applies to dairy herds that converted to organic production under the Final Rule. It was meant to apply to all dairy herds, no matter when they converted or how they converted or even if they started by buying a herd that was already organic.
2. The preamble was clear that "the conversion provision cannot be used routinely to bring nonorganically raised animals into an organic operation".
3. The preamble was clear that the intent was for a consistent, across the board origin of livestock whether for edible or nonedible products, with the only exceptions being the one-time dairy herd conversion and the allowance of 2 day old chicks. Why would they require that wool or leather be from livestock that were organic from the last third of gestation but not require it for milk? They wouldn't. The intent was that all livestock, except for chicks and the one-time dairy herd conversion, be organic from the last third of gestation.

4. Breeder stock, if pregnant, must be brought onto an organic farm no later than the last third of gestation if the progeny is to be raised as organic livestock.
5. The summary of the Rule (page 80549) states that "this national program will facilitate domestic and international marketing of fresh and processed food that is organically produced and assure consumers that such products meet **consistent uniform standards**." The interpretation that the (205.236(a)(2)(iii) clause sets up different classes of producers and allows one class of producers the ability to engage in a practice that is denied to other producers of the same commodity is indefensible in regards to the Rule requiring consistent uniform standards. Allowing dairy producers whose organic herds did not convert using the 80/20 conversion or whose herds were already in place prior to the implementation of the Rule to bring conventionally born and raised replacement stock into their organic herds with just one year on organic management while those herds converting under the 80/20 conversion after the implementation of the Rule cannot is an abrogation of the intent of the writers of the Rule. The Rule's intent is that all organic producers work under the same rules, on a level playing field. To interpret a clause to allow the division of producers of the same product into categories that allow different standards is discriminatory and unfair and does not provide consumers with the consistent, uniform standards that they expect.

In sum, it is clear from the preamble that the writers intended:

- There be assurance to consumers that strict, uniform, and consistent standards are in place.
- There be an economically feasible provision to allow nonorganic dairy herds to convert to organic on a one-time, whole herd basis.
- There be a consistent origin of livestock standard for all classes of livestock except poultry and the one-time dairy herd conversion.
- That this origin of livestock be from the last third of gestation except for the two exceptions only.
- That all dairy producers are to be treated equally in terms of application of standards.

The lack of clarity/ confusion with the way the Rule was formatted could be fixed by a simple technical correction--making (205.236(a)(2)(iii) a separate paragraph rather than (iii) under the herd conversion exception as it was formatted in the Final Rule. Doing so would remove the ambiguity and honor the preamble's stated intent that once a dairy herd is organic, then all replacements must be organic from the last third of gestation.